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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,500	10/24/2001	Guy Richards	24180-124005	3373
7590	08/25/2005		EXAMINER	
Matthew E. Leno McDermott, Will & Emery 31st Floor 227 West Monroe Street Chicago, IL 60606			MIGGINS, MICHAEL C	
			ART UNIT	PAPER NUMBER
			1772	
DATE MAILED: 08/25/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/046,500	RICHARDS ET AL.
	Examiner Michael C. Miggins	Art Unit 1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 27 May 2005.

2a) This action is **FINAL**.                                   2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-50 is/are pending in the application.

4a) Of the above claim(s) 1-24 and 42-50 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 25-41 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 24 October 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/27/05

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### **DRAWINGS**

1. Applicant's proposed changes to the drawings would be acceptable to the examiner. However, the objection to the drawing set forth in the non-final rejection of 2/22/05, page 2, paragraph 3 is maintained until applicant files the new drawings. The objection to the bib data sheet set forth in the non-final rejection of 2/22/05, page 2, paragraph 2 is withdrawn.

### ***Election/Restrictions***

2. Claims 1-24 and 42-50 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/9/03.

### **REJECTIONS WITHDRAWN**

3. The 35 USC 102(b) rejection set forth in the non-final rejection of 2/22/05, page 3, paragraphs 6-7 is withdrawn.

### **REJECTIONS REPEATED**

4. The 35 USC 103(a) rejection is repeated for the reasons of record set forth in the non-final rejection of 2/22/05, pages 3-5, paragraphs 8-10.

### **NEW REJECTIONS**

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 25-32 and 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oas et al. (US 4357288).

The disclosure of Oas is discussed in the non-final rejection of 2/22/05, page 3, paragraphs 6-7.

The difference between the instant claims and Oas is that applicant now claims the preform sidewall thickness which is approximately 2.3 to 4.8 times the thickness of the container sidewall (claim 25) and the preform facilitating an average axial stretch ratio of less than approximately 2.0:1 to produce the container. Applicant has argued that Oas discloses a preform to container sidewall thickness ratio of 5.33 to 10.66 and an axial stretch ratio of 2.2:1.

However, discovering the optimized range or value of a result effective variable, absent clear and convincing evidence of an unexpected result, is obvious and within the level of ordinary skill in the art through routine experimentation (MPEP 2144). It would have been obvious to one of ordinary skill in the art to have provided a preform sidewall thickness which is approximately 2.3 to 4.8 times the thickness of the container sidewall and the preform facilitating an average axial stretch ratio of less than approximately 2.0:1

to produce the container in order to provide improved strength and/or transparency.

### ANSWERS TO APPLICANT'S ARGUMENTS

7. Applicant's arguments filed on 5/27/05 have been carefully considered but are deemed unpersuasive. Applicant's arguments with regard to the 102 rejection have been considered but are moot since the rejection has been withdrawn and the newly recited limitations in claims 25 and 38 are addressed in the new 103 rejection above.

Applicant has argued that the teachings of Oas and Collette are not combinable since Oas is drawn to a polypropylene bottle and Collette is drawn to polyester-type bottles. However, it has been found that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In the instant case, the references are broadly related as parisons for blow molded bottles, which bottles have sidewalls that are several times thinner than the parisons from which they are made.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce

the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine is the fact that the bottles of Collette provide blow molded bottles with enhanced resistance to cracking. Furthermore, Collette was not relied on to provide polyester-type materials; rather, Collette was relied on to show that thicker base areas are well known in the art and it would have been obvious to provide a thicker base areas to resist cracking.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

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the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael C. Miggins  
Primary Examiner  
Art Unit 1772



MCM  
August 22, 2005